

SECRET

OGC 82 - 03643
13 April 1982

MEMORANDUM FOR: [REDACTED] 25X1
Senior Legislative Liaison, IC Staff
THROUGH: [REDACTED] 25X1
Chief, Intelligence Law Division/OGC
FROM: [REDACTED] 25X1
Assistant General Counsel
SUBJECT: Security Committee Staff Study of Audio
Countermeasures Coverage on Capitol Hill
REFERENCE: Memo from Chairman, SECOM to D/OTS, dtd
31 March 82, same subject

A proposal has been made to study audio countermeasures coverage on the Capitol. I understand the study will be conducted in several Committee rooms only while those rooms are unoccupied, except for consenting persons participating in the study. You have asked what the DCI's authority is to conduct such a study. Assuming permission is obtained from the appropriate persons on the Hill, the authority is as follows:

- (1) Section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. § 403(d)(3);
- (2) Section 105(f) of the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1805(f); and
- (3) Executive Order 12333, Sections 1.5(g)(h) and (s), 1.8(h) and (i) and 2.4(a).

Copies of the statutes and Executive Order are attached with the referenced portions marked.

Attachments

cc: Jerry G. Prehn, Chief/Legislative Liaison Branch/OEA
[REDACTED] COM Staff 25X1
[REDACTED] C/OTS/EOD
[REDACTED] S/TSD 25X1

ALL PORTIONS SECRET

SECRET

A. CENTRAL INTELLIGENCE AGENCY NATIONAL SECURITY ACT OF 1947

ACT OF JULY 26, 1947

AN ACT To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That [50 U.S.C. 401 note] this Act may be cited as the "National Security Act of 1947".

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DECLARATION OF POLICY

SEC. 2. [50 U.S.C. 401] In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

SEC. 101. [50 U.S.C. 402] (a) There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

**Item editorially inserted.

The Council shall be composed of¹—

- (1) the President;
- (2) the Vice President;
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- (5) the Director for Mutual Security;
- (6) the Chairman of the National Security Resources Board;

and

(7) The Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of \$10,000 a year.² The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended,³ to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

CENTRAL INTELLIGENCE AGENCY

SEC. 102. [50 U.S.C. 403] (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof, and with

¹The positions of Director for Mutual Security, Chairman of the National Security Resources Board, Chairman of the Munitions Board, and Chairman of the Research and Development Board have been abolished by various Reorganization Plans. The statutory members of the National Security Council are the President, Vice President, Secretary of State, and Secretary of Defense.

²The specification of the salary of the head of the National Security Council staff is obsolete and has been superseded.

³The Classification Act of 1923 was repealed by the Classification Act of 1949. The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 80-544, Sept. 8, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and subchapter 53 of title 5. Section 7(b) of that Act (80 Stat. 631) provided: "A reference to a law replaced by sections 1-6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act."

a Deputy Director of Central Intelligence who shall act for, and exercise the powers of, the Director during his absence or disability. The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services, whether in an active or retired status, or from among individuals in civilian life: *Provided, however,* That at no time shall the two positions of the Director and Deputy Director be occupied simultaneously by commissioned officers of the armed services, whether in an active or retired status.

(b) (1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then—

(A) in the performance of his duties as Director, or Deputy Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit, or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1), the appointment to the office of Director, or Deputy Director, of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving in the office of Director, or Deputy Director, continue to hold rank and grade not lower than that in which serving at the time of his appointment and to receive the military pay and allowance (active or retired, as the case may be, including personal money allowance) payable to a commissioned officer of his grade and length of service for which the appropriate department shall be reimbursed from any funds available to defray the expenses of the Central Intelligence Agency. He also shall be paid by the Central Intelligence Agency from such funds an annual compensation at a rate equal to the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances.

(3) The rank or grade of any such commissioned officer shall, during the period in which such commissioned officer occupies the office of Director of Central Intelligence, or Deputy Director of Central Intelligence, be in addition to the numbers and percentages otherwise authorized and appropriated for the armed service of which he is a member.

(c) Notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555),⁴ or the provisions of any other law, the

⁴The cited Act of August 24, 1912, was repealed by the law enacting title 5, United States Code (Public Law 89-544, Sept. 8, 1966, 80 Stat. 378). The provisions of section 6 of that Act were codified as section 7501 of title 5.

Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.⁵

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

✓ (3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however*, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

⁵ The functions of the Civil Service Commission were transferred to the Director of the Office of Personnel Management by section 102 of Reorganization Plan No. 2 of 1978 (92 Stat. 3783; 5 U.S.C. 1101 note).

(f) Effective when the Director first appointed under subsection (a) has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946) shall cease to exist; and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.

NATIONAL SECURITY RESOURCES BOARD *

SEC. 103. [50 U.S.C. 404] (a) The Director of the Office of Defense Mobilization,⁷ subject to the direction of the President, is authorized, subject to the civil-service laws and the Classification Act of 1949,⁸ to appoint and fix the compensation of such personnel as may be necessary to assist the Director in carrying out his functions.

(b) It shall be the function of the Director of the Office of Defense Mobilization to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war;

(2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves;

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security:

(c) In performing his functions, the Director of the Office of Defense Mobilization shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

* Section 103 deals with emergency preparedness. Section 50 of the Act of September 3, 1954 (68 Stat. 1244), eliminated former subsection (a), relating to the establishment of the National Security Resources Board, and redesignated former subsections (b)-(d) as subsections (a)-(c). The section heading was not amended accordingly.

⁷ The functions of the Director of the Office of Defense Mobilization under this section, which previously were transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4-102 of Executive Order No. 12148 (July 20, 1979, 44 F.R. 43239, 50 U.S.C. App. 2251 note).

⁸ The Classification Act of 1949 was repealed by the law enacting title 5, United States Code (Public Law 89-544, Sept. 6, 1966, 80 Stat. 378), and its provisions were codified as chapter 51 and subchapter 53 of that title.

TITLE II—THE DEPARTMENT OF DEFENSE

Sec. 201. [Subsections (a) and (b) were repealed by section 307 of Public Law 87-651 (Act of September 7, 1962, 76 Stat. 526). Subsection (c) consisted of an amendment to another Act.]

(d) [50 U.S.C. 408] Except to the extent inconsistent with the provisions of this Act, the provisions of title IV of the Revised Statutes* as now or hereafter amended shall be applicable to the Department of Defense.

[Sections 202-204 were repealed by section 307 of Public Law 87-651 (Act of September 7, 1962, 76 Stat. 526).]

DEPARTMENT OF THE ARMY

Sec. 205. [Subsections (a), (d), and (e) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676)].

(b) All laws, orders, regulations, and other actions relating to the Department of War or to any officer or activity whose title is changed under this section shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to relate to the Department of the Army within the Department of Defense or to such officer or activity designated by his or its new title.

(c) [50 U.S.C. 409(a)] The term "Department of the Army" as used in this Act shall be construed to mean the Department of the Army at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Army.

DEPARTMENT OF THE NAVY

Sec. 206. (a) [50 U.S.C. 409(b)] The term "Department of the Navy" as used in this Act shall be construed to mean the Department of the Navy at the seat of government; the headquarters, United States Marine Corps; the entire operating forces of the United States Navy, including naval aviation, and of the United States Marine Corps, including the reserve components of such forces; all field activities, headquarters, forces, bases, installations, activities and functions under the control or supervision of the Department of the Navy; and the United States Coast Guard when operating as a part of the Navy pursuant to law.

[Subsections (b) and (c) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676)].

DEPARTMENT OF THE AIR FORCE

Sec. 207. [Subsections (a), (b), (d), (e), and (f) were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676)].

* Title IV of the Revised Statutes consisted of sections 158-198 of the Revised Statutes. Sections 176 and 193 are codified as sections 492-1 and 492-2 of title 31, United States Code. The remainder of those sections have been repealed or replaced by provisions of title 5, United States Code, as enacted. See the "Tables" volume of the United States Code for the distribution of specific sections.

(c) [50 U.S.C. 409(c)] The term "Department of the Air Force" as used in this Act shall be construed to mean the Department of the Air Force at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.

[Section 208 (less subsection (c)) was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676). Section 208(c) was repealed by the law enacting title 5, United States Code (Public Law 89-544, September 6, 1966, 80 Stat. 654).]

[Sections 209-214 were repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676).]

TITLE III—MISCELLANEOUS

[Section 301 was repealed by the law enacting title 5, United States Code (Public Law 89-544, September 6, 1966, 80 Stat. 654).]

[Section 302 was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 676).]

ADVISORY COMMITTEES AND PERSONNEL

SEC. 303. [50 U.S.C. 405] (a) The Director of the Office of Defense Mobilization, the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$50 for each day of service, as determined by the appointing authority.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of section 281, 283, or 284 of Title 18, United States Code, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

[Sections 304-306 were repealed by the law enacting title 5, United States Code (Public Law 89-544, September 6, 1966, 80 Stat. 654).]

AUTHORIZATION FOR APPROPRIATIONS

SEC. 307. [50 U.S.C. 411] There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act.

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DEFINITIONS

SEC. 308. [50 U.S.C. 410] (a)¹⁰ As used in this Act, the term "function" includes functions, powers, and duties.

(b) As used in this Act, the term, "Department of Defense" shall be deemed to include the military departments of the Army, the Navy, and the Air Force, and all agencies created under title II of this Act.

SEPARABILITY

SEC. 309. [50 U.S.C. 401 note] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 310. [50 U.S.C. 401 note] (a) The first sentence of section 202 (a) and sections 1, 2, 307, 308, 309, and 310 shall take effect immediately upon the enactment of this Act.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.

SUCCESSION TO THE PRESIDENCY

SEC. 311. [Section 311 consisted of an amendment to the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, resignation, death, or inability both of the President and Vice President".]

[Title IV *less* section 411 was repealed by section 307 of Public Law 87-651 (Act of September 7, 1962, 76 Stat. 526).]

REPEALING AND SAVING PROVISIONS

SEC. 411. [50 U.S.C. 412] All laws, orders, and regulations inconsistent with the provisions of this title are repealed insofar as they are inconsistent with the powers, duties, and responsibilities enacted hereby: *Provided*, That the powers, duties, and responsibilities of the Secretary of Defense under this title shall be administered in conformance with the policy and requirements for administration of budgetary and financial matters in the Government generally, including accounting and financial reporting, and that nothing in this title shall be construed as eliminating or modifying the powers, duties, and responsibilities of any other department, agency, or officer of the Government in connection with such matters, but no such department, agency, or officer shall exercise any such powers, duties, or responsibilities in a manner that will render ineffective the provisions of this title.

¹⁰ Section 307 of Public Law 87-651 (Act of September 7, 1962, 76 Stat. 526) repealed section 308(a) *less* its applicability to sections 2, 101-103, and 303.

TITLE V—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES ¹¹

CONGRESSIONAL OVERSIGHT

SEC. 501. [50 U.S.C. 413] (a) To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall—

(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the "intelligence committees") fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

(3) report in a timely fashion to the intelligence committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

(b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of subsections (a) and (b).

¹¹ This title is also set out *post* at page 149 along with other materials relating to congressional oversight of intelligence activities.

(d) the ¹² House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of the Congress under this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

¹² So in original.

WAR AND NATIONAL DEFENSE 50 § 1706

Supplemental savings provisions; supersedure of inconsistent provisions

(c) (1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

Periodic reports to Congress

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority. Pub.L. 95-223, Title II, § 207, Dec. 28, 1977, 91 Stat. 1628.

References in Text. The National Emergencies Act, referred to in text, is Pub.L. 95-412, Sept. 14, 1978, 90 Stat. 1253, which is classified principally to section 1601 et seq. of this title. For additional classifications of that Act see Short Title note under section 1601 of this title.

Section 101(b) of this Act, referred to in subsec. (a)(2), is section 101(b) of Pub.L. 95-223, which is set out as a note under section 5 of the Appendix to this title.

Section 202 of the National Emergencies Act, referred to in subsec. (b), is classified to section 1622 of this title.

Pars. (1), (2), and (3) of section 101(a) and pars. (A), (B), and (C) of section 202(a) of the National Emergencies Act, referred to in subsec. (c)(1), are classified, respectively, to sections 1601(a)(1), (2), and (3) and 1622(a)(A), (B), and (C) of this title.

Section 101(a) and title II of the National Emergencies Act, referred to in subsec. (c)(2), are classified, respectively, to sections 1601(a) and 1621 et seq. of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-223, see 1977 U.S. Code Cong. and Adm. News, p. 4540.

CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE [NEW]

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50 § 1801 WAR AND NATIONAL DEFENSE

§ 1801. Definitions

As used in this chapter:

(a) "Foreign power" means—

- (1) a foreign government or any component thereof, whether or not recognized by the United States;
- (2) a faction of a foreign nation or nations, not substantially composed of United States persons;
- (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
- (4) a group engaged in international terrorism or activities in preparation therefor;
- (5) a foreign-based political organization, not substantially composed of United States persons; or
- (6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

- (1) any person other than a United States person, who—
 - (A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a) (4) of this section;
 - (B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or
- (2) any person who—
 - (A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power which activities involve or may involve a violation of the criminal statutes of the United States;
 - (B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;
 - (C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor or on behalf of a foreign power; or
 - (D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;
- (2) appear to be intended—
 - (A) to intimidate or coerce a civilian population;
 - (B) to influence the policy of a government by intimidation or coercion; or
 - (C) to affect the conduct of a government by assassination or kidnapping; and

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(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve a violation of chapter 105 of Title 18, or that would involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize

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the acquisition and retention, and prohibit the dissemination of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e) (1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3) of this section.

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

Pub.L. 95-511, Title I, § 101, Oct. 25, 1978, 92 Stat. 1783.

Short Title. Section 1 of Pub.L. 95-511 provided: "That this Act [enacting this chapter, amending sections 2511, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provision set out as a note under this section] may be cited as the 'Foreign Intelligence Surveillance Act of 1978'." Effective Date. Section 301 of Pub.L. 95-511 provided that: "The provisions of

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this Act [enacting this chapter, amending sections 2511, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provision set out as a note under this section] and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if

that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [this chapter] within ninety days following the designation of the first judge pursuant to section 103 of this Act [section 1803 of this title]."

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

§ 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court

(a) (1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this chapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers as defined in section 1801(a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and

If the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at last thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 1808(a) of this title.

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of Central Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804 of this title or

(B) the certification is necessary to determine the legality of the surveillance under section 1806(f) of this title.

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as

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will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) of this section unless such surveillance may involve the acquisition of communications of any United States person.

Pub.L. 95-511, Title I, § 102, Oct. 25, 1978, 92 Stat. 1786.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S. Code Cong. and Adm. News, p. 3904.

EXECUTIVE ORDER NO. 12139

May 23, 1979, 44 F.R. 30311

EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804) [this section and section 1804 of this title], in order to provide as set forth in that Act for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)) [subsec. (a) of this section], the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1-102. Pursuant to Section 102(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(b)) [subsec. (b) of this section], the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act [section 1803 of this title] to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1-103. Pursuant to Section 104(a)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)) [section 1804(a)(7) of this title], the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(7) of the Act in support of applications to conduct electronic surveillance:

- (a) Secretary of State.
- (b) Secretary of Defense.
- (c) Director of Central Intelligence.
- (d) Director of the Federal Bureau of Investigation.
- (e) Deputy Secretary of State.
- (f) Deputy Secretary of Defense.

(g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate.

1-104. Section 2-202 of Executive Order No. 12036 [set out as a note under section 401 of this title] is amended by inserting the following at the end of that section: "Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978 [this chapter] shall be conducted in accordance with that Act as well as this Order."

1-105. Section 2-203 of Executive Order No. 12036 [set out as a note under section 401 of this title] is amended by inserting the following at the end of that section: "Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 [this chapter] shall be conducted in accordance with that Act as well as this Order."

JIMMY CARTER

1. Declaratory Judgment

Where challenged electronic surveillance did not pose immediate adverse threat to plaintiffs, Congress had recently passed this chapter, which specifies in elaborate detail procedures to be followed for conducting domestic electronic surveillance for foreign intelligence purposes, and precise constitutional and statutory issues raised were being litigated on appeal in criminal action against suspected foreign agent, declaratory judgment that interception of plaintiffs' phone conversations with agent violated U.S.C.A. Const. Amend. 4 would be inappropriate. *Chagnon v. Bell*, D.C.D.C. 1979, 468 F.Supp. 827.

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§ 1803. Designation of judges—Court to hear applications and grant orders; record of denial; transmittal to court of review

(a) The Chief Justice of the United States shall publicly designate seven district court judges from seven of the United States judicial circuits who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act, except that no judge designated under this subsection shall hear the same application for electronic surveillance under this Act which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this Act, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) of this section.

Court of review; record, transmittal to Supreme Court

(b) The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

Expeditions conduct of proceedings; security measures for maintenance of records

(c) Proceedings under this Act shall be conducted as expeditiously as possible. The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence.

Tenure

(d) Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) of this section shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) of this section shall be designated for terms of three, five, and seven years. Pub.L. 95-511, Title I, § 103, Oct. 25, 1978, 92 Stat. 1788.

References in Text. This Act, referred to in subsecs. (a), (b) and (c), is Pub.L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which in addition to enacting this chapter, amended sections 2311, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S. Code Cong. and Adm. News, p. 3904.

§ 1804. Applications for court orders—Submission by Federal officer; approval of Attorney General; contents

(a) Each application for an order approving electronic surveillance under this chapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this chapter. It shall include—

- (1) the identity of the Federal officer making the application;
- (2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

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(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this chapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

Exclusion of certain information respecting foreign power targets

(b) Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a) of this section, but shall state whether physical entry is required to effect the surveillance and shall contain such informa-

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tion about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

Additional affidavits or certifications

(c) The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

Additional information

(d) The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

Pub.L. 95-511, Title I, § 104, Oct. 25, 1978, 92 Stat. 1788.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title. **Legislative History.** For legislative history and purpose of Pub.L. 95-511, see 1978 U.S. Code Cong. and Adm. News, p. 3904.

(a)(7) of this section, see Ex.Ord.No. 12139, May 23, 1979, 44 F.R. 30311, set out as a note under section 1802 of this title.

Designation of Certain Officials to Make Certifications. For provisions relating to the designation of certain officials to make certifications required by subsection

§ 1805. Issuance of order—Necessary findings

(a) Upon an application made pursuant to section 104, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title; and

(5) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E) of this title and any other information furnished under section 1804(d) of this title.

Specifications and directions of orders

(b) An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance;

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(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate such carrier, landlord, custodian, or other person for furnishing such aid.

Exclusion of certain information respecting foreign power targets

(c) Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1) of this section, but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated

(d)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this chapter may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this Act for a surveillance targeted against a foreign power, as defined in section 1801(a)(5) or (6) of this title, or against a foreign power as defined in section 1801(a)(4) of this title that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

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Emergency orders

(e) Notwithstanding any other provision of this chapter, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 1803 of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this chapter for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel

✓ (f) Notwithstanding any other provision of this chapter, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and:

(D) *Provided*, That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

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(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of Title 18, or section 605 of Title 47, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this chapter; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

Retention of certifications, applications and orders

(g) Certifications made by the Attorney General pursuant to section 1802(a) of this title and applications made and orders granted under this chapter shall be retained for a period of at least ten years from the date of the certification or application.

Pub.L. 95-511, Title I, § 105, Oct. 25, 1978, 92 Stat. 1790.

References in Text. This Act, referred to in subsec. (d)(2), is Pub.L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which in addition to enacting this chapter, amended sections 2511, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S. Code Cong. and Adm. News, p. 3904.

§ 1806. Use of information—Compliance with minimization procedures; privileged communications; lawful purposes

(a) Information acquired from an electronic surveillance conducted pursuant to this chapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this chapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this chapter may be used or disclosed by Federal officers or employees except for lawful purposes.

Statement for disclosure

(b) No information acquired pursuant to this chapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

Notification by United States

(c) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority

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of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this chapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

Notification by States or political subdivisions

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this chapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

Motion to suppress

(e) Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

In camera and ex parte review by district court

(f) Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this Act, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

Suppression of evidence; denial of motion

(g) If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized

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or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

Finality of orders

(h) Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

Destruction of unintentionally acquired information

(i) In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

(j) If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

Pub.L. 95-511, Title I, § 106, Oct. 25, 1978, 92 Stat. 1793.

References in Text. This Act, referred to in subsec. (f), is Pub.L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which in addition to enacting this chapter amended sections 2311, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title. **Legislative History.** For legislative history and purpose of Pub.L. 95-511, see 1978 U.S. Code Cong. and Adm. News, p. 3904.

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

- (a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this chapter; and

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(b) the total number of such orders and extensions either granted, modified, or denied.

Pub.L. 95-511, Title I, § 107, Oct. 25, 1978, 92 Stat. 1795.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

§ 1808. Report of Attorney General to congressional committees; limitation on authority or responsibility of information gathering activities of congressional committees; report of congressional committees to Congress

(a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this chapter. Nothing in this chapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(b) On or before one year after the effective date of this Act and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this Act. Said reports shall include but not be limited to an analysis and recommendations concerning whether this Act should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.

Pub.L. 95-511, Title I, § 108, Oct. 25, 1978, 92 Stat. 1795.

References in Text. The effective date of this Act, referred to in subsec. (b) is the effective date of Pub.L. 95-511, which is Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as an Effective Date note under section 1801 of this title.

This Act, referred to in subsec. (b), is Pub.L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which in addition to enacting this chapter, amended sections 2511, 2518 and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

§ 1809. Criminal sanctions—Prohibited activities

(a) A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by statute.

Defense

(b) It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

Penalties

(c) An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

Federal jurisdiction

(d) There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

Pub.L. 95-511, Title I, § 109, Oct. 25, 1978, 92 Stat. 1796.

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Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

§ 1810. Civil Liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

Pub.L. 95-511, Title I, § 110, Oct. 25, 1978, 92 Stat. 1796.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

§ 1811. Authorization during time of war

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this chapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress. Pub.L. 95-511, Title I, § 111, Oct. 25, 1978, 92 Stat. 1796.

Effective Date. Section effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub.L. 95-511, set out as a note under section 1801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-511, see 1978 U.S.Code Cong. and Adm.News, p. 3904.

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